APPEAL NO. 032699
FILED NOVEMBER 17, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on September 2, 2003. The hearing officer determined that the appellant (claimant) did not have good cause for failing to submit to the required medical examination (RME) on May 2, 2003, and that the claimant was not entitled to temporary income benefits (TIBs) from May 2 through June 5, 2003.

The claimant appealed, asserting that the hearing officer misinterpreted Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.6(b) (Rule 126.6(b)) and that the claimant did not have written notice of the rescheduled appointment. The respondent (carrier) responds, contending that Rule 126.6(b) is not applicable because there was no scheduling conflict and urges affirmance.

DECISION

Affirmed.

The facts are not much in dispute. The claimant had a scheduled RME appointment on April 18, 2003. The claimant said that on that morning she was running late because of traffic and that she called the doctor's office on a cell phone. The claimant was told that the doctor was also running late and it appears there was a mutual agreement to reschedule the appointment. The appointment was rescheduled for 11:00 a.m. on May 2, 2003, and the claimant testified that she wrote the rescheduled date and time down on the original scheduling letter. A letter dated April 21, 2003, advising the claimant of the rescheduled appointment was sent to an incorrect address and the claimant testified that she never received the letter. In the meantime the claimant lost or could not find the paperwork where she had written down the date/time of the rescheduled appointment. The claimant testified that she recalled the appointment to have been rescheduled for May 8, 2003. On May 7, 2003, the claimant called the doctor's office to confirm her appointment and was informed that the rescheduled appointment was May 2, 2003. The RME was rescheduled for June 6, 2003. The carrier suspended TIBs pursuant to Rule 126.6(h) for the period of May 2, 2003, through June 5, 2003, the period at issue here.

The claimant contends that she had good cause for failing to submit to the RME on May 2, 2003, because she had never received written notice of that appointment, that she misunderstood or incorrectly recalled the date of the rescheduled RME, and that Rule 126.6 requires written notice be sent to the claimant 10 days prior to the RME. Rule 126.6(b). The hearing officer commented that the claimant "did not call to check on the rescheduled date until after the date of the appointment" and that the claimant's "actions did not demonstrate due diligence."

In this case the claimant received written notice of the April 18, 2003, appointment, that appointment was rescheduled and the claimant wrote down the rescheduled appointment on some paperwork that she had in the car. We do not agree that the hearing officer misinterpreted Rule 126.6(b) as the claimant alleges. In this case the April 18, 2003, appointment was rescheduled because both the claimant and the doctor were running late. Rule 126.6(b) specifically notes that, "the 10 day notice requirement does not apply to a rescheduled examination." The carrier is authorized to suspend TIBs if the employee fails to attend an RME without good cause and a carrier may presume a lack of good cause if after rescheduling the examination pursuant to Rule 126.6(b)(1)(A)(ii) "the employee failed to submit to the rescheduled examination." The hearing officer found no good cause because the claimant failed to exercise due diligence in checking on the rescheduled date.

Whether good cause exists is a matter left up to the discretion of the hearing officer, and the determination will not be set aside unless the hearing officer acted without reference to any guiding rules or principles. Texas Workers' Compensation Commission Appeal No. 002816, decided January 17, 2001, citing Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). We have held that the appropriate test for good cause is that of ordinary prudence; that is, the degree of diligence an ordinarily prudent person would have exercised under the same or similar circumstances. Texas Workers' Compensation Commission Appeal No. 030432, decided April 3, 2003. We cannot conclude that the hearing officer abused his discretion in determining that the claimant did not have good cause for failing to attend the rescheduled RME. A prudent individual would have called the doctor's office as soon as they realized that the notation of the rescheduled appointment had been misplaced rather than rely on an inexact or incorrect recollection.

The hearing officer's decision is supported by the evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CT CORPORATION**
**350 NORTH ST. PAUL**
**DALLAS, TEXAS 75201**.

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Thomas A. Knapp
Appeals Judge

CONCUR:

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Elaine M. Chaney
Appeals Judge

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Robert W. Potts
Appeals Judge